

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 22, 2011

In the Matter of BAKER, Minors.

No. 304519
Kent Circuit Court
Family Division
LC No. 09-053562-NA;
09-053563-NA;
09-053564-NA;
09-053565-NA

Before: HOEKSTRA, P.J., and K.F. KELLY and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right from a trial court order that terminated her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j).¹ Respondent, who suffered from bipolar disorder and borderline personality disorders, was 27 years old when her parental rights to her four children – ages eight, six, five, and three, respectively – were terminated for failure to stabilize her mental health, improve her parenting skills, and address her history of engaging in domestically violent relationships. We reverse, finding that termination of respondent's parental rights was premature in light of respondent's significant progress leading up to the termination hearing. We also find that the children's best interests were not fully explored, including the fact that the children were placed with relative caregivers during the entire proceeding.

I. BASIC FACTS AND PROCEDURAL HISTORY

A. PRE-PETITION INTERVENTION

Kent County Children's Protective Services intervened after a domestic disturbance on March 10, 2009, between respondent and her husband, Matthew Baker, who is also the father of the children. Petitioner, the Kent County Department of Human Services (DHS), contracted with Bethany Christian Services (BCS) to provide Early Impact in-home services to address concerns regarding parenting skills, Baker's substance abuse issue, to conduct Early On evaluations of the

¹ The parental rights of the children's father, Matthew Baker, were also terminated, though he is not participating in this appeal.

children's development, and to provide a referral to the YWCA for domestic violence counseling. Early Impact began providing in-home services in April 2009. Baker tested positive for cocaine in May 2009. He left the state to begin his own construction business in Pennsylvania.

On July 10, 2009, respondent attended one of two sessions with Dr. Ronald Vanderbeck to assess her mental health. Respondent failed to attend the second assessment. Nevertheless, after one hour with respondent and conducting a variety of tests, Vanderbeck diagnosed respondent with mood disorder not otherwise specified (due to "some diagnostic uncertainty in regards to the Bipolar Disorder and elements of dysthymia and posttraumatic stress"), and as having "prominent dependent, avoidant, depressive and masochistic personality traits." Because respondent failed to attend the second session, Vanderbeck could not fully explore whether a diagnosis of bipolar disorder was warranted. Vanderbeck noted that respondent had chronic and pervasive emotional problems that significantly challenged her ability to cope adequately on a day-to-day basis, including moods that swung from depression to euphoria, a negative self view, and a fear of rejection that triggered emotional crisis when she perceived she was being rejected. She exhibited characteristics of a person who had been abused, such as being dependent, needy, suspicious, easily manipulated, pessimistic, having low self esteem and a need for validation, avoiding conflict at all cost, and being likely to submit to the demands of others to avoid rejection and abandonment. Vanderbeck recommended evaluation for medication, participation in a women's support group to provide social acceptance and a sense of empowerment, parenting classes, individual counseling over a long period of time because it would take respondent quite some time to form a trusting therapeutic relationship, and that counseling not delve into her past abuse but focus on learning how to identify and solve current day-to-day problems.

Respondent did not follow through on domestic violence counseling at the YWCA and during the next several months the Early Impact in-home worker, who provided general counseling, expressed concern about respondent putting the children at risk by attaching herself to unsuitable, unfit and violent men. Respondent identified a man with a criminal record, Gerald VanGessel, as her new live-in boyfriend in May 2009 but left that relationship because VanGessel was not willing to make a commitment. In August 2009, respondent identified William Weir, a man with a domestic violence history, as a boyfriend. By September 2009, respondent identified Brian Schwab as her live-in boyfriend. Schwab was substantiated for domestic violence and abuse on September 27, 2009. Schwab was also substantiated for threatened harm against his three children in May 2009 after driving himself, his girlfriend, two small children and an infant on a motorcycle with the infant car seat between Schwab and his girlfriend. Schwab's criminal history included misdemeanor aggravated assault in 2002, felony larceny in 2003, felony sexual assault in 2004, misdemeanor non-sexual assault in 2005, felony fraudulent activities in 2009, misdemeanor non-sexual assault in 2009, and domestic violence against his girlfriend in September 2009. On October 4, 2009, police responded to an assault and battery between respondent and Schwab's former girlfriend.

On October 6, 2009 respondent brought one of her daughter's to a sexual assessment center due to sexual acting out between her two girls because it was "more than likely" that two neighbor boys demonstrated inappropriate touching. On October 8, 2009, the Early Impact worker and CPS worker separately observed the three oldest children playing outside without supervision while their maternal grandmother was babysitting.

B. PRELIMINARY HEARINGS

On October 8, 2009, despite being advised by DHS and the Early Impact worker to ask Schwab to move out of her home and being provided a printout of his criminal offenses, respondent indicated she would not ask him to leave. On October 9, 2009 petitioner filed a petition requesting the trial court to order Schwab's removal from respondent's home and respondent to comply with DHS-recommended services, but indicated it did not object to the children remaining in respondent's care if Schwab left the home. The trial court referee authorized the petition on October 9, 2009, allowing the children to remain in respondent's care on the condition that Schwab leave the home. Schwab left the home, but respondent telephoned Baker immediately after the October 9, 2009 hearing, asking that he return to Michigan to assume custody of the children and take them to Pennsylvania while she "thought things over."

Another preliminary hearing was held on October 12, 2009, before a referee. The referee noted that the children were very bonded to respondent. The consensus was that respondent was a fairly good mother who had mental health issues that could compromise the safety of the children. The referee expressed great concern about leaving the children in respondent's care given her seemingly intractable propensity to associate with unsuitable men, but ordered that the children remain in the home under the specific conditions that respondent supervise Baker's visits with the children while he was in Michigan, complete her psychological evaluation, participate in any counseling or therapy recommended by DHS, and not allow any unrelated males to have contact with the children in their home.

Immediately after the preliminary hearing on October 12, 2009, respondent supervised Baker's visit with the children in her home until she and Baker got into an argument. Respondent left the children with Baker while she went to see Schwab. A new petition was filed on October 14, 2009, requesting the children's removal from respondent's care. A preliminary hearing was held that same day. The referee authorized the petition, ordered both parents' visits with the children be supervised, and ordered that respondent and Baker fully cooperate with DHS and BCS. Notably, respondent, not DHS, voluntarily placed the children with their maternal grandfather and step-grandmother.

C. ADJUDICATION/DISPOSITION HEARING

Adjudication was held December 14, 2009. The trial court assumed jurisdiction over the children pursuant to Baker's plea, as well as respondent's history of domestic violence, poor decision-making leading to the children's lack of proper care and safety, and failure to comply with court orders. The matter proceeded immediately to initial disposition. BCS worker Emily Boomsma testified respondent acknowledged her past choices of partners was unwise and appeared "very motivated" to make changes and comply with her parent-agency treatment plan (PAA). Respondent had the support of her extended family, obtained full-time employment, submitted consistently negative drug screens, ended her relationship with Schwab and filed for a personal protection order against him because he threatened to burn down her home. Respondent was planning to attend an intake session at the YWCA in the next week. Boomsma

testified that respondent and the children were very bonded and visits were appropriate. She was in favor of allowing respondent unsupervised visits with the children. Boomsma had no concern with respondent's ability to parent or supervise the children in the absence of an unsuitable male partner, but was concerned with her poor choices in relationships. Boomsma had not yet referred respondent to parenting classes because they were held in the evenings and respondent worked second shift, but was hoping to arrange for a BCS parenting instructor to provide instruction during visits with respondent and the children, or allow respondent an opportunity to view parenting DVDs outside of a class setting and complete the related homework. To achieve reunification, Boomsma required respondent to consistently attend counseling at the YWCA, complete a parenting program, and consistently take anti-depression medication.

Early Impact worker Sarah Sak testified during initial disposition that she had significant concern regarding respondent's proper supervision of the children, and was concerned that respondent continued to engage in inappropriate relationships. Respondent delayed ending her relationship with Schwab until just nine days prior to the adjudicatory hearing. Sak stated the children would be "completely at risk" if returned to respondent's home. The trial court ordered visits with the children be supervised or unsupervised in DHS or BCS's discretion, and continued its previous order that respondent and Baker comply with their PAAs.

D. REVIEW HEARINGS

At a March 11, 2010, review hearing, BCS worker Boomsma reported that the children were doing well with their grandparents. Respondent had moved to Pennsylvania to get away from Schwab and make a fresh start. Although she originally signed the non-participation agreement in February 2010, respondent contacted Boomsma and said that she would like to work on her PAA. Respondent told Boomsma that, in addition to getting away from Schwab, she hoped that moving near Baker would allow for them to coordinate child care. Boomsma reported that respondent continued to be motivated. Respondent maintained consistent contact with Boomsma to apprise her of her whereabouts. At the hearing, the children's guardian ad litem (GAL) noted that the children were doing well in placement, but were a "handful."

At a June 3, 2010, review hearing, Boomsma reported that respondent had moved to Alabama with her sister on March 14, 2010. In spite of the second move within a few months' time, respondent remained compliant with her PAA. She provided proof of domestic violence counseling, proof that she was taking her prescribed medication, and proof of employment. Boomsma reported that on May 20, 2010, respondent cut her wrists in an apparent suicide attempt and was hospitalized for a day. Boomsma sent respondent a Greyhound bus ticket so that she could return to Michigan to visit the children. Respondent decided to stay in Michigan, finding that her extreme depression was due in large part to her separation from her children. Since returning to Michigan, respondent had already contacted the YWCA for counseling and was already employed. She continued to be medication compliant. Schwab was incarcerated and was no longer a concern for Boomsma. Again, respondent remained highly motivated. Boomsma wanted to continue supervised visits for the time being, but believed that unsupervised visits were not far off. Respondent needed to continue to demonstrate stability, not only in remaining in one place, but also from an emotional standpoint. Regarding respondent's visits with the children, Boomsma reported:

She is very well bonded to them. She interacts very appropriately. A lot of times in situations like these, when parents are in the visiting room, it can get kind of chaotic and parents will threaten time-outs or threaten to discipline their children and not follow-through, and Ms. Baker does follow-through. She's consistent; she's always happy to see the children; the children appear to be very happy to see her. I've observed her one time with the kids now since she's been back in Michigan, and, I mean, the visit went very well; the kids were eager to cuddle with her and hug her; she did puzzles and read books; we played outside. She does really well with her children.

While both Boomsma and the GAL were pleased with the children's relative placement, they noted that the children were receiving services from a behavioral specialist. The trial court noted that this was a "very interesting case" and that respondent had many strengths. Nevertheless, the trial court believed that there continued to be deep-seated emotional issues and that a new psychological evaluation would probably be helpful, given respondent's apparent mood swings. Boomsma reported that she was no longer going to be the worker on respondent's case; the new worker was going to be Kaitlyn Schiefer.

A permanency planning hearing was held on September 1, 2010. Shelley Niebor testified that she was supervising the new worker, Kaitlyn Schiefer, while Schiefer completed her training at BCS. Niebor reported on the children's escalating behavioral problems. The children were at times defiant and devious. There was one instance in which the oldest child urinated on the younger boy and possibly asked him to touch his penis. The three oldest children were receiving counseling. The GAL acknowledged that the children were "a handful" and that the grandparents needed a day a week of respite care. Their father had not visited them in six months. Niebor testified that respondent needed to attend counseling at Life Guidance Center and was scheduled for an intake appointment. Respondent's participation in counseling for the next 90 days would be significant. Based on the new worker's observations, respondent was also referred for a parenting time specialist. Niebor expressed concerns that respondent desired a relationship with a man who was one of her roommates in a shared home. Nevertheless, Niebor opined that reunification was still a "strong possibility." At the conclusion of the hearing, the trial court noted that respondent "has demonstrated a real commitment to making progress on her treatment plan and demonstrating that she is able to provide a safe, stable, and nurturing environment for her children." The trial court was concerned about the possibility that respondent was in a new relationship and wanted a background check of the individual.

By the November 17, 2010, the tenor of the proceedings had changed. The new worker, Kaitlyn Schiefer, had just recently completed her job training. Schiefer testified that the grandparents were complaining about the children's escalating behavior. Respondent attended all of her scheduled visits and her bonding with the children was "good." Still, Schiefer worried about some of respondent's perceived parenting deficiencies. It was hard for respondent to give any of the children any one-on-one time because the other would then act out for attention. Respondent was inconsistent with discipline and showed increased frustration with children. Schiefer believed that respondent needed to position herself differently in the room so that she could see and include all of the children. On one occasion, workers had to intervene after respondent forcefully placed one of the children in time out. However, Schiefer noticed a recent improvement in respondent's parenting skills. The visits where respondent brought activities to

do as a family were much better. Although respondent had been assigned a parenting time specialist, there was a lapse in the service for reasons beyond respondent's control.

Schiefer reported that, although respondent had obtained appropriate housing, she was now living with Jerry VanGessel. Schiefer had an opportunity to assess VanGessel on October 25, 2010. He admitted to a number of prior arrests, as well as a domestic violence incident involving his sister, but a criminal background check revealed no prior convictions. VanGessel also revealed that he took a number of physician-prescribed prescription drugs for pain. Schiefer was concerned about VanGessel's prescription drug use and his prior arrests. She considered him a "big unknown."

Schiefer reported that respondent had been attending counseling at Life Guidance Services with Karlee Grable since September 2010. Grable reported to Schiefer that respondent had borderline personality disorder and also likely suffered from bipolar disorder. Respondent's medication did not seem to be meeting her needs and a change in medication was warranted. Although Grable indicated that respondent was making progress, respondent admitted on October 28, 2010, that she felt as though she was on the verge of a nervous breakdown. Respondent told Grable that she was concerned that time was running out on the case. In a conversation Schiefer had with Grable, Grable sounded far less positive than her written report.

Even though respondent "has made quite a bit of progress in this last month and-a-half," Schiefer believed that the goal should be changed to adoption because respondent failed to show stability. The following exchange took place between respondent's attorney and Schiefer:

Q. So, at this point in time you are asking that there be a goal change to adoption, even though we have a parent who attends all her parenting time visits, correct?

A. Correct.

Q. Has appropriate housing, correct?

A. She has obtained housing. The part that I will not be able to establish is if she's able to maintain it as it's been so recent of [sic] last week.

Q. But you have to say it was appropriate?

A. She's obtained it and it appears appropriate.

Q. She has maintained employment since June?

A. She has maintained employment.

Q. She is regularly and consistently attending counseling; is that correct?

A. Correct.

Q. She has even attended to her medical needs by getting a change in medications, is that correct?

A. Correct.

Q. We have a parenting time specialist who's really not going to be consistently involved until December of 2010, correct?

A. Correct.

Q. We have foster parents who have expressed frustration about the children getting into counseling because of their high needs, and that didn't happen until late this summer; is that correct?

A. Correct.

Q. We don't have a substance abuse issue, correct?

A. Correct.

Q. We still have an issue about emotional stability; you want to see everything maintained for a while; is that correct?

A. That is correct.

Q. And we have an issue about domestic relations because we now have this new gentleman in her life who at this point appears to be very willing to be involved with a parent-agency treatment plan; is that correct?

A. He does at this point, yes.

Q. Are these children bonded to their mother?

A. Yes, they are.

Q. How bonded would you say they are? Is it a good bond, weak bond, strong bond?

A. I'd say strong was the word I would use.

Q. Ok. And do you believe that the mother is bonded with these children?

A. Absolutely.

Q. Do you think these children would suffer if their relationship with their mother were terminated?

A. I think it would be difficult for the children to process that as they've already been trying to process that with Mr. Baker absent. I do think that they would suffer and that would be addressed in their counseling. Obviously we would hope that these children would continue on with counseling as this is traumatic from them.

I do not think at this point returning them to Ms. Baker would provide the stable environment that these high needs, behavioral-need[s] children absolutely need, and I do not feel comfortable making the recommendation that they be returned to her.

Q. But you do believe that if Ms. Baker continues to show the progress that you have seen and is able to maintain all these things that we've talked about that she's been doing, that it would be safe to reunify her with her children?

A. I believe that over the last 13 months yes, Ms. Baker has made progress in these last two months, but these concerns have been from day one, and I am not confident in responding to the questions as Ms. Baker still has not shown stability over this time, and to say if she had additional time the question would be how much time and what would it look like then. And I'm not sure that it is in the children's best interests to continue to drag this case out until Ms. Baker is able to show and maintain stability.

In questioning the witness, the trial court wondered whether the source of the children's behavioral problems could be the absence of Baker in their lives. The GAL supported a change of goal to adoption. He was concerned as to how much longer the grandparents could "hold on." The trial court authorized filing a termination petition.

E. TERMINATION HEARING

The termination hearing was held on March 16, 2011, March 28, 2011, and April 22, 2011. Many of the facts already stated were repeated during the termination hearing.

Karlee Grable testified that, because of respondent's diagnosis of borderline personality disorder, she recommended that respondent participate in Dialectical Behavioral Therapy (DBT) for at least one year, which was scheduled to begin at BCS on January 12, 2011, but was cancelled for lack of a sufficient number of participants to offer the program. Respondent took her prescribed medication with the exception of one and a half weeks in January 2011, when she could not obtain free samples and did not have the money to purchase it. Respondent appeared to benefit from the medication and reported that she felt better. At her counseling session on March 8, 2011, respondent told Grable she had made sufficient progress and stated she no longer desired therapy, and Grable closed her case. Conversely, respondent denied ever requesting discharge. Grable testified respondent made some progress in counseling, but noted the counseling remained very surface-level and focused primarily on respondent's ability to cope with day-to-day activities. Respondent began to pull away and miss appointments once they delved into any deeper issues. Respondent did not want to discuss her relationship with men, and told Grable "repeatedly" that she and VanGessel were just friends who resided together and were

not in a relationship, but also stated to Grable that she could not picture her life without VanGessel. Grable was concerned by respondent's reluctance to discuss her relationships, and recommended respondent continue in therapy. Grable could not opine whether respondent would be able to maintain a safe home environment for her children. Grable was relatively new to Life Guidance, having just completed her internship and working there since May 2010.

Parenting specialist, Lora Robinson, testified that respondent was one of her first clients. Visits were extremely chaotic. The children did not listen to respondent and left the room to run up and down the hallway. Respondent did not internalize appropriate parenting skills. Robinson observed respondent parent appropriately at times, but had to intervene to restore order to respondent's visits much more frequently than with other parents with whom she worked. Robinson observed that any improvement made by respondent was not consistent or carried over to subsequent visits, and she often sat on the couch and watched the children play and did not engage in the visits. Robinson admitted the four children were young, had a lot of energy. Robinson was concerned that respondent was often not aware of what the children were doing, did not proactively address unsafe behaviors until they had already happened, and became impatient and aggressive with the children when they refused to stay in time outs. Robinson felt the children would be at risk in respondent's care, not of being neglected, but of being unsupervised and getting into danger. Robinson noticed an improvement in the visits in the past month.

The children's advocacy therapist, Kristyn LeHockey, testified that she was counseling the two oldest children to address communication skills, sibling rivalry and one child's mothering behavior. The focus of the third child's therapy was on feelings, emotions, education and expression. LeHockey reported the children often tried to get attention by hitting, shoving and coming close to a person's face. She worked with them on using words to ask for what they want. The older children told LeHockey that yelling between adults was "just how people love each other." LeHockey believed their lack of proper social behavior was indicative of poor parenting in an unstructured environment. LeHockey could not say whether the children's negative behaviors increased or resulted from being removed from respondent, but did note that residing in the structured, supervised foster home would not cause the children's negative behaviors. Incredibly, LeHockey opined that the children's placement provided the children with the structure they needed without ever going there and observing the children interact with their grandparents. It is important to note that LeHockey believed the children had been in foster care since only June 2011.

LeHockey reported the children spoke positively of VanGessel, whom they had known their whole lives. The children stated in counseling they loved Baker and missed him. They were clearly negatively impacted by his disappearance from their lives. Such absence confused the children and LeHockey noted the perceived rejection it conveyed could damage the children's self esteem. She counseled the children during the time of respondent's supervised visits at BCS and observed that the visits were very unorganized and chaotic. Respondent did not appear to internalize or follow through on methods of discipline suggested by LeHockey, although she appeared to have the physical and mental capacity to do so. LeHockey noted the children had made progress in counseling and believed they would regress if returned to respondent's home. LeHockey supported termination of respondent's parental rights and felt termination was in the children's best interests because respondent would be unable to provide

the children with proper structure, supervision and safety. She admitted termination would be damaging to the children and cause regression in their treatment. LeHockey had recently received her master's degree in May 2010.

Schiefer testified that in January 2011 respondent took two of VanGessel's prescription pills. Although VanGessel was totally appropriate with the children, Schiefer was concerned by the fact that he shared his medication with respondent. Schiefer was also concerned about the status of the relationship between respondent and VanGessel. The relationship appeared to have cooled in that the two had separate bedrooms. Respondent appeared to desire a long-term romantic relationship, while VanGessel told his counselor that he was not interested in a long-term relationship. Another recent concern was the fact that respondent did not test for therapeutic levels of her medication. It was only after being confronted that respondent indicated she did not have the money for her prescription. Schiefer did not understand why money was an issue because respondent's budget should have been adequate to cover the medication. Respondent indicated to Schiefer that she felt forced by BCS to take the medication. It was critical that respondent take the medication, as it seemed to have made her calmer and less frustrated and she was clearly benefitting from taking it. As far as therapy with Grable was concerned, Schiefer was under the impression that respondent voluntarily discontinued after Grable told respondent she would not need to keep coming if termination occurred. Although DBT was optimal for someone with a personality disorder, it simply was not available.

Schiefer continued to believe that termination of respondent's parental rights was in the children's best interests. Respondent still struggled to maintain discipline during visits. When asked whether respondent, with continued counseling and medication, could provide a stable environment for the children, Schiefer opined, "I believe that she has had a sufficient amount of time at this point." Schiefer also rejected the idea of in-home services, "Services were offered in the home to Ms. Baker prior to the case opening, and then the – her children were eventually removed, so at this time with the information that I have I do not see that services in the home would enable her to help take care of her children." In spite of the fact that the children were with relative caregivers, Schiefer opined that respondent "had already had 17 months to make progress on her identified goals, and the agency does not believe that she would be able to make the type of progress necessary within a reasonable amount of time while these children are not having a permanent, stable living – or permanency plan for them right now being in foster care." Schiefer also noted that the children had a strong bond with respondent and it would be difficult for them to process the loss of respondent, just as Baker's move to Pennsylvania and infrequent visits had been "traumatic" for them.

Respondent testified on her own behalf and admitted that her poor choice of Schwab as a partner and her mother as a babysitter led to the children's removal. She admitted that she made little progress and remained unstable during the first few months of the proceeding. Respondent made a conscious decision on the bus ride home from Alabama to "be on the right path from then on," and since that time she consistently engaged in counseling, maintained employment, maintained suitable housing since November 2010, had a supportive relationship with VanGessel, and maintained financial stability. Respondent considered VanGessel her "roommate." Respondent never requested discharge from Life Guidance; rather, Grable told her on March 8, 2011, she need not continue in counseling if the court terminated her parental rights at the March 16, 2011, termination hearing. Respondent told Grable she would see what

transpired in court, did not schedule an appointment for March 12, 2011, and when she attempted to schedule an appointment the next week was informed that she had been discharged. Respondent intended to resume counseling with Grable after her insurance coverage became effective on May 1, 2011.

Respondent noted that changing her medication had greatly increased her emotional stability and sense of control, and helped her feel less frustrated parenting the children at visits. Respondent explained that she was without medication only one week in January 2011 during the brief period she relied on samples from the clinic while waiting for her prescription plan to become effective and that she obtained samples as soon as they became available again. Respondent attended every visit with the children and testified to each child's various personalities and characteristics. She admitted to chaos at the visits and pointed out it was very difficult to visit with the children in a small room with no separate place for a time out. She described activities she engaged in with the children, such as hiding Easter eggs on the BCS playground and letting the children hunt for them, and noted she hated to discipline them during visits because their time together was so short. She considered herself a good parent and stated she was now "absolutely" emotionally stable enough to safely care for them. When asked what was preventing reunification, respondent explained, "[t]he lack of time with my children. I keep being told that I need to be more consistent in my parenting skills, but I think that in a two-hour period of time that with all of them fighting for my attention because they only get to see me for two hours, I think that that interferes with my parenting – me being able to show consistent progress with my parenting time skills."

The trial court terminated respondent's parental rights. She now appeals as of right.

II. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Once the petitioner has established by clear and convincing evidence that there are statutory grounds for termination and that termination of parental rights is also in the child's best interests, the trial court shall order termination of parental rights. MCL 712A.19b(5). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152, 782 N.W.2d 747 (2010). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *Mason*, 486 Mich at 152. The trial court's decision regarding the child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000).

III. ANALYSIS

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j), which provide:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent's issues date back to the spring of 2009 when domestic violence brought the family to the attention of CPS. Early intervention failed when respondent attended only one of two psychological evaluation appointments and failed to follow-through with recommended counseling. The conditions leading to the December 2009 adjudication included respondent's unstable mental health, her propensity to engage in negative and domestically violent relationships regardless of the detriment they caused her children, lack of supervision, and failure to comply with court orders. Respondent moved to Pennsylvania in March 2010 and then to Alabama the following month, demonstrating significant instability. Nevertheless, even when moving from state to state, respondent kept in touch with her worker and complied with her PAA. The lowest time for respondent was in May 2010 when she cut her wrists in a suicide attempt while living with her sister in Alabama. Following the incident, Boomsma purchased a bus ticket for respondent so that she could return to Michigan and visit the children. En route to Michigan, respondent made the decision to stay near her children and get her life in order. As she did throughout the case, respondent immediately set up counseling for herself and obtained employment. While respondent did not make progress in the initial months following adjudication, it must be noted that during that time she had not yet been diagnosed with bipolar disorder. She had been taking anti-depressants, but, as she discovered with Grable in September 2010, the medication was not meeting her needs. Even though she was not properly medicated, respondent at all times showed a willingness and desire to comply with her PAA.

Although respondent was always motivated to engage in reunification services, she did not truly realize progress until she returned to Michigan once and for all in May 2010. Since that time, respondent maintained employment, obtained appropriate housing, achieved a measure of financial security, did not report domestic violence, attended every visit, actively participated in

counseling, and demonstrated an ability to consistently maintain therapeutic levels of her medication. Respondent was an active and committed participant in her PAA.

The concerns that remained at the time of the termination hearing were respondent's relationship with VanGessel and her perceived parenting deficiencies. For Schiefer, respondent's roommate, VanGessel, was a "big unknown" factor in the case. Yet VanGessel had no criminal convictions and eagerly engaged in services when added to respondent's PAA. Although the workers feared respondent's inability to live without being in a relationship, there was simply nothing troubling about VanGessel. The children had known him as a family friend their whole lives. They reacted positively to him. Whether VanGessel and respondent were in a romantic relationship or simply friends who shared living space was of no consequence as long as VanGessel did not pose a threat to the children.

Respondent was seen as falling short of the ideal parent when she was given only two hours a week in a small room with four children under age six. She was criticized for being inconsistent and for allowing the visits to become chaotic. Yet these very young children had to compete for their mother's attention at a two-hour weekly visit. They had escalating behavioral problems that even the grandparents were having trouble addressing. The one room where the visits took place did not have a separate quiet area to place a child in time out. Respondent encountered a double-edged sword during the visits – being criticized by workers for asking for too much help and then being criticized for not asking for help often enough. The workers acknowledged that respondent's visits had improved since she was taking her medication. She was calmer and more patient.

We are troubled by the haste with which the agency sought termination of respondent's parental rights in this case, especially in light of her continued progress and the fact that the children were being cared for by their paternal grandfather and step-grandmother. "[A] child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are 'being cared for by relatives.'" *Mason*, 486 Mich at 164. Schiefer did not want to give respondent additional time or in-home services because, in her opinion, respondent had already been given enough time and was previously provided in-home services (albeit back in 2009 before the petition was even filed and before respondent had proper medication and counseling). Very telling is the absence of any testimony that respondent was incapable of caring for the children. In fact, just the opposite is true – the witnesses agreed that respondent had the apparent capacity to care for the children. They simply did not want to afford respondent more time to do so.

In terms of the children's best interests, the record revealed that the children's behavior escalated greatly from the time they were initially placed with their grandparents until the termination hearing. That is not to imply that the children were being neglected in foster care. It is more likely that the children were devastated by their father's abandonment and by the fact that they were allowed such limited contact with their mother. The grandparents, who had more time and resources, were struggling with some of the children's behaviors. Likewise, the GAL

admitted on more than one occasion that the children were “a handful” and that the grandparents were becoming burned out. We do not see how termination of respondent’s parental rights would in any way resolve the children’s behavioral issues. In fact, given the undisputed close bond to their mother, the children would only suffer further psychological scarring. Termination of respondent’s parental rights would further traumatize the children, who were being cared for in a safe and nurturing environment with relatives.

Based on the record before us, we find that the trial court clearly erred in terminating respondent’s parental rights. At the time of termination, respondent was making substantial progress and the children were in the care of relatives. Termination of her parental rights was premature under the circumstances.

Reversed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering